

Remarks

Applicant and the undersigned thank Examiner Aughenbaugh careful review of this application. Reconsideration of the pending claims in view of the following remarks is respectfully requested.

By the present communication, claim 33 has been amended to claim Applicants' invention with greater specificity. More specifically, independent claim 33 has been amended to recite a metal. Claims 34-37, 47-49 and 54 have been maintained in their previously presented form. Claims 1-32, 38-46 and 50-53 were previously cancelled. Thus, claims 33-37, 47-49 and 54 are pending and under active prosecution.

Double Patenting Rejection

Claims 33-37, 47-49 and 54 were rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 4 and 10 of U.S. Pat. No. 7,185,677. Claims 33-37, 47-49 and 54 were rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1 and 7 of U.S. Pat. No. 7,331,989. In response, Applicants submit a Terminal Disclaimer herewith. Withdrawal of the rejection and allowance of the claim are respectfully requested.

Rejections under 35 U.S.C. § 102(b)

Claims 33, 34 and 36 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Trescony et al. (U.S. Pat. No. 5,653,745; hereinafter "Trescony"). Applicant traverses the rejection.

Trescony fails to disclose all of the elements of the claim, as presently presented. For example, Trescony fails to disclose a stent, as required by independent claim 33. Instead, Trescony is directed to vascular grafts (see Trescony, col. 1, line 11). One of skill in the art would not consider the claimed stents to be equivalent to the grafts described in Trescony.

Similarly, Trescony fails to disclose a mesh member, as required by independent claim 33. Instead, Trescony is directed to the use of a woven or knitted fabric. Again, one of skill in the art would not consider the claimed mesh member to be equivalent to the woven or knitted fabrics described in Trescony.

Finally, Trescony fails to disclose that the internal helical formation has a helix angle of between 5 and 16 degrees, as required by independent claim 33. Trescony Figure 5, cited by the Office Action, fails to disclose any specific angle for any of the corrugated pleats (42) found in the graft.

While Applicants disagree with the assertions in the Office Action that Trescony discloses all of the elements of the claims, in an effort to further prosecution and avoid a protracted discussion of the issues, claim 33 has been amended to specify that the tubular mesh member is metal. Trescony fails to disclose this element.

In fact, Trescony completely fails to mention any product that includes a metal mesh member. Trescony only mentions that material from which the invention is made can be fabric or EPTFE. (See Trescony, col. 2, lines 6-10 and col. 4, lines 20-23). Other materials mentioned in Trescony include various polymers (Kraton G2075, a thermoplastic rubber; Pellanthane 2363-80A, a polyurethane; and C-Flex R70-001 EM50A, a styrene olefin copolymer) and resin blends. (See col. 3, lines 3-13). Thus, Trescony fails to disclose the use of metal or an equivalent

thereof. For at least this reason, as well as the other reasons described above, claim 33 is allowable.

As Trescony does not disclose all of the elements of the amended claim, withdrawal of the rejection and allowance of the claims are respectfully requested.

Rejection under 35 U.S.C. § 103(a)

Claims 33 and 54 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Trescony. Applicant respectfully disagrees and traverses the rejection.

As noted above with respect to the rejection under 35 U.S.C. § 102(b), Trescony fails to disclose all of the elements of the claim, as currently amended. Specifically, Trescony fails to disclose a stent, a mesh member, or as acknowledged by the Office Action, an internal helical formation having a helical angle of between 5 and 16 degrees. Additionally, Trescony fails to disclose a metal tubular mesh member, as presently required by the claims. For these reasons alone, the rejection is improper and should be withdrawn.

Furthermore, Applicants submit that it would not have been obvious to one of skill in the art at the time of the invention to use metal for the grafts disclosed in Trescony. A intravascular stent and a vascular graft are two separate and distinct products. As described by Trescony, vascular grafts are used to augment or replace diseased arteries and other blood vessels. (See Trescony beginning at col. 1, line 15). Once the vascular graft is implanted, blood passes through the graft. Accordingly, the vascular graft only has a minimal degree of rigidity because they are required to mimic the physical properties of and act like blood vessels. Moreover, the patency of the vascular graft is maintained by the flow of blood through them. In contrast, a stent is inserted within a blood vessel for the purpose of providing support and to keep the lumen of a (diseased)

blood vessel open – thus requiring that the stent have some rigidity. For these reasons, one of skill in the art would not have considered incorporating a metal tubular member in the graft of Trescony, as such a feature would be completely unnecessary.

Therefore, because Trescony fails to disclose all of the elements of the claim, and because one of skill in the art would not have combined a metal tubular member with the graft of Trescony, withdrawal of the rejection and allowance of the claims is respectfully requested.

Allowable Claims

Applicants acknowledge that claims 37 and 47—49 have only been rejected for alleged double patenting. Thus, in view of the Terminal Disclaimer submitted herewith to obviate the rejection of these claims, Applicants note these claims are now allowable.

Conclusion

The foregoing is submitted as a full and complete Response to the Final Office Action dated April 7, 2009. Applicants have made a diligent effort to advance the prosecution of the application by amending the claims and submitting arguments in support of the patentability of claims 33-37, 47-49 and 54. Applicants have not acquiesced to any rejection and reserve the right to address the patentability of any additional claim features in the future.

In view of the above, reconsideration of the rejections and allowance of claims 33-37, 47-49 and 54 are respectfully requested.

As the three-month statutory period for reply expired on July 7, 2009, a request for a one-month extension of time is respectfully requested to make this Response timely filed. Should the Commissioner deem any additional fees as being due, including any fees for any extensions of

time, the Commissioner is hereby authorized to debit said fees from, or credit any overpayments to, Bracewell & Giuliani LLP, USPTO Deposit Account Number 50-0259, Reference No. 081421.002.

The Examiner is invited to contact the undersigned via telephone at the number below if a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,



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